

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

ROBIN ZABLUDOFF,

08 CV 00198

Plaintiff,

ANSWER & AFFIRMATIVE
DEFENSES OF KENNETH
MROCZEK, M.D.

- against -

KENNETH MROCZEK, M.D.,

Defendant.

----- X

Defendant, KENNETH MROCZEK, M.D., by his attorneys, McALOON & FRIEDMAN, P.C., answering the plaintiff's complaint, respectfully alleges, upon information and belief, as follows:

JURISDICTION AND VENUE

1. Denies any knowledge or information sufficient to form a belief as to each and every allegation set forth in paragraph "2" of the complaint.

2. Denies each and every allegation set forth in paragraph "4" of the complaint except admits that defendant is Board Certified in Orthopedic Surgery and has an office located at 530 First Avenue, in the County and State of New York.

3. Denies any knowledge or information sufficient to form a belief as to each and every allegation set forth in paragraph "5" of the complaint.

FACTUAL ALLEGATIONS

4. Denies each and every allegation set forth in paragraph "6" of the

complaint except admits that defendant rendered professional services in accordance with good and accepted Orthopedic practice to plaintiff at various times beginning in March 2005 and otherwise begs leave to refer all questions of law to the Court.

5. Denies each and every allegation set forth in paragraph "7" of the complaint.

ANSWERING THE FIRST CAUSE OF ACTION

6. Denies each and every allegation set forth in paragraphs "8", "9", "10", and "11" of the complaint.

ANSWERING THE SECOND CAUSE OF ACTION

7. The defendant repeats and reiterates each and every denial or denial of knowledge or information sufficient to form a belief as to each of the allegations of the complaint repeated and realleged by plaintiff in paragraph "12" of the complaint.

8. Denies each and every allegation set forth in paragraphs "13", "14", and "15" of the complaint.

**AS AND FOR A FIRST, SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE:**

9. The defendant's liability, if any, is limited pursuant to New York CPLR 1600, et seq.

**AS AND FOR A SECOND, SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE:**

10. The injuries and damages of the plaintiff for which these causes of action have been instituted, were caused wholly or in part through the culpable conduct

and contributory negligence on the part of said plaintiff and therefore the amount of damages, if any, shall be diminished in the proportion which said conduct attributable to said plaintiff bears to the defendant's conduct, if any, which caused the damages.

**AS AND FOR A THIRD, SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE:**

11. Plaintiff's second cause of action, if any, is barred by §2805-d of the New York Public Health Law.

**AS AND FOR A FOURTH, SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE:**

12. Plaintiff's Ad Damnum clause violated New York CPLR §3017(a).

**AS AND FOR A FIFTH, SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE:**

13. Plaintiff's causes of action, if any, are barred by §3012-a of the New York CPLR.

**AS AND FOR A SIXTH, SEPARATE
AND DISTINCT AFFIRMATIVE DEFENSE:**

14. Any verdict or judgment should be reduced by the amounts of past or future collateral source reimbursements of alleged special damage pursuant to New York CPLR 4545(c).

WHEREFORE, the defendant demands judgment dismissing plaintiff's complaint together with the costs and disbursements of this action.

JURY DEMAND

The defendant demands a trial by jury on all issues so triable.

Dated: New York, New York
April 25, 2008

Yours, etc.

McALOON & FRIEDMAN, P.C.

By: 

WAYNE M. ROTH, ESQ (7177)

Attorneys for Defendant

Office and P.O. Address

123 William Street, 25th Floor

New York, New York 10038-3804

Tel. No. (212) 732-8700

TO:

PODLOFSKY, HILL, ORANGE
& MODZELWESKI, LLP

Attorneys for Plaintiff

98 Cutter Mill Road, Suite 299N

Great Neck, New York 11021

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

ROBIN ZABLUDOFF,

08 CV 00198

Plaintiff,

- against -

KENNETH MROCZEK, M.D.,

Defendant.

----- x

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the within document was served upon the following person by placing a copy of same in the United States mail, postage prepaid, on April 25, 2008, addressed as follows:

PODLOFSKY, HILL, ORANGE
& MODZELWESKI, LLP
Attorneys for Plaintiff
98 Cutter Mill Road, Suite 299N
Great Neck, New York 11021

Respectfully submitted,

McALOON & FRIEDMAN, P.C.

By: 

WAYNE M. ROTH, ESQ. (WR-7177)

Attorneys for Defendant
Office and P.O. Address
123 William Street, 25th Floor
New York, NY 10038-3804
(212) 732-8700